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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,009	06/01/2000	Kim R. Smith	163.1269US01	4485

7590

05/19/2003

Merchant & Gould PC
P O Box 2903
Minneapolis, MN 55402-0903

EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 05/19/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/585,009

Applicant(s)

SMITH ET AL.

Examiner

Lorna M. Douyon

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. This action is responsive to the “request for reconsideration” filed on February 19, 2003.
2. Claims 1-4, 6, 8, 9, 16-20, 22 and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by Ando et al. (JP 09217100), hereinafter “Ando” for the reasons set forth in the office action in paper number 9.
3. Claims 16-26, 29-30 and 33-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Scepanski (US Patent No. 5,670,473) for the reasons set forth in the office action in paper number 9.
4. Claims 5, 7, 14, 15, 21, 23, 24, 26, 31-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ando for the reasons set forth in the office action in paper number 9.
5. Claims 10-13, 27-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ando as applied to the above claims, and further in view of Scepanski for the reasons set forth in the office action in paper number 9.

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Response to Applicants' Arguments

6. Applicants' arguments filed on February 19, 2003 have been fully considered but they are not persuasive.

With respect to the anticipation rejection based upon Ando, Applicants argue that although Ando refers to a hydrate, Ando fails to disclose or suggest using the hydrated component and the hydratable component according to the invention and fails to disclose forming a solid as a result of movement of water of hydration from a hydrated component to a hydratable component according to the presently claimed invention.

The Examiner respectfully disagrees with the above arguments because in the abstract and in claim 3, it is clear that Ando teaches a solid detergent useful for dishwashing or for hard surfaces which is manufactured by preparing a uniformly mixed detergent composition that partially contains hydrated compounds and naturally solidifying the mixture under no heating and no pressuring within the mold. In Example 20 of Ando, the composition contains sodium tripolyphosphate 30% (reads on hydratable component), sodium metasilicate.9H₂O 20% (hydrated component), NaOH 35%, anhydrous sodium sulfate 11% (reads on hydratable component) and nonionic surfactant 4% (hydratable component which is preferred in the instant claims) which is prepared by filling the composition in a closed container and sitting at 20-25° for one day. It is clear therefore that the composition of Ando comprises hydrated components and hydratable components and therefore when a closed container is filled with the uniformly mixed detergent composition and allowed to sit for one day at 20-25° (under no heating), the

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composition would inherently solidify as a result of movement of water of hydration from the hydrated component to the hydratable components.

With respect to the rejection based upon Scepanski, Applicants argue that Scepanski describes a method for forming a solid cleaning agent from hydrated forms of salts that includes heating and melting the hydrated forms of salts and by providing the hydrated forms of salts as melts, hence, it is submitted that the hydrated forms of salts are no longer hydrates. Applicants also argue that the solidification, according to Scepanski, occurs after mixing with additional ingredients and allowing the composition to cool, whereas the present invention provides for solidification as a result of a competitive hydration reaction where water of hydration moves from the hydrated component to the hydratable component

The Examiner respectfully disagrees with the above argument because the present claims rejected over Scepanski are “product-by-process” claims, hence, any difference imparted by the product-by-process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The resulting product of the presently claimed composition is a molded detergent composition which is no different from the molded detergent composition of Scepanski. Therefore, the reference is deemed to teach the

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claimed composition; Applicants need to show that their invention is actually different from and unexpectedly better than the prior art, see *In re Best*, 195 USPQ 430, 433, 434 (CCPA 1977).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

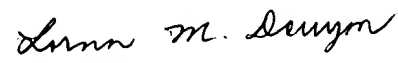
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 872-9311 - for Official After Final faxes
(703) 872-9310 - for all other Official faxes.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

May 16, 2003



Lorna M. Douyon
Primary Examiner
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